

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

VS.

DAVID J. HERNANDEZ,

Defendant.

CASE NO. 8:09CR27

TENTATIVE FINDINGS

The Court has received the Presentence Investigation Report (“PSR”) and the Defendant’s objections thereto (Filing No. 118). The Defendant filed a motion for downward departure and a supporting brief (Filing Nos. 116, 117). See Order on Sentencing Schedule, ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the sentencing guidelines are advisory.

Objections

The Defendant objects to the following portions of the PSR: ¶ 44 - the 2-level enhancement under U.S.S.G. § 2D1.1(b)(1) for possession of a dangerous weapon; and ¶¶ 49 and 63 - the Defendant's career offender status. The objections will be heard at sentencing, and the government has the burden of proof by a preponderance of the evidence with respect to both issues.

Downward Departure

The motion will be heard at sentencing.

IT IS ORDERED:

1. The Defendant's objections to ¶ 44 (possession of a dangerous weapon) and ¶¶ 49 and 63 (career offender status) will be heard at sentencing;
2. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;
3. Absent submission of the information required by paragraph 2 of this Order, my tentative findings may become final;
4. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing; and
5. The Defendant's motion for downward departure (Filing No. 116) will be heard at sentencing.

DATED this 28th day of August, 2009.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge